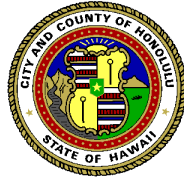


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: March 16, 2016
Standard Financial Plaza
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Hon. Riki Amano (ret.), Commissioner
Hon. Allene Suemori (ret.), Commissioner
Laurie A. Wong, Associate Legal Counsel (ALC)
William Shanafelt, Investigator III
Geoffrey Kam, Deputy Corporation Counsel,
Department of the Corporation Counsel

Absent: Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Michael Lilly, Esq., Vice Chair

Stenographer: Lisa P. Parker, Legal Clerk III
Kristine Bigornia, Legal Clerk I

MINUTES OF THE MARCH 16, 2016 OPEN SESSION MEETING

I. CALL TO ORDER

The Ethics Commission members received a copy of the March 11, 2016 Memorandum regarding the Agenda items for the March 16, 2016 meeting. Chair Marks called the meeting to order at 11:32 a.m.

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the February 11 and February 17, 2016 Meetings.

Chair Marks asked the Commission if there were any questions or discussion and, since there were none, asked for a motion to approve the minutes. Commissioner Amano so moved, Commissioner Silva seconded, all were in favor and the motion passed unanimously.

Commissioner Amano commented that the minutes were extensive and that it would be easier if the minutes were summarized. The ALC agreed as long as the minutes reflected the discussion to the extent that Staff could summarize them.

Chair Marks recalled that at one point the EDLC mentioned that there was an OIP opinion about it, but did not know the extent of that opinion, however at the very least there needs to be an indication of whether a motion was made, the substance of the motion and how the vote was taken, as well as a discussion that could be summarized. She then asked the ALC to check on the OIP opinion, and the ALC acknowledged that she would.

COR Deputy Geoff Kam informed the Commission that OIP is generally in favor of a full disclosure and transparency, as much as possible, and that their opinions tend to tilt aggressively to that side. Deputy Kam continued that COR tends to agree that it could be summarized; the substance of motion, the votes, some of the discussion and thinks there's an OIP opinion to the effect that minutes may not be verbatim, so long as it captures the main points of discussions.

The ALC responded that several years ago when she first came on board and prior to hiring the Legal Clerk III, she went to an OIP Sunshine Law training and was told that the way the minutes had been done, did not meet the Sunshine Law Requirements since in the past the minutes were cut and pasted from the EDLC's Open Session Memo, and there was no reflection of any discussion. Thereafter, the minutes became more specific and worked further towards a more comfortable middle-ground.

Commissioner Silva commented that he would like to have a summary and also mentioned that if anyone wanted to know details of the discussion, they could listen to the "taped" minutes.

Commissioner Amano asked if the minutes were prepared by Staff, or whether they were sent out for transcription, and the ALC confirmed that the minutes are usually prepared by Staff, but that there were a few meeting minutes that were transcribed by a transcriptionist, because Staff was working on cases and were behind in transcribing minutes.

Commissioner Yuen commented that they should rely on Staff's judgment, but at minimum the minutes should contain the motions, decisions or critical discussion, and upon review via email, if a critical discussion was missing, the Commissioner could always inquire.

B. Executive Director and Legal Counsel's Administrative Report. (Written)

1. Work Reports from Staff Members.

Chair Marks reminded the ALC and Staff that the Commission requested, not only an Exhibit reference, but also a label, since it would have been easier for them to identify in Dropbox. The ALC asked for clarification and if the electronic name of the document could be listed, and Chair Marks and Commissioner Amano agreed.

Chair Marks asked Staff if they had any questions or clarification and the Legal Clerk III asked if they wanted the same reference on the agenda. Chair Marks responded that it should be done in the Dropbox exhibit items, and Commissioner Amano agreed.

2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice).

Chair Marks informed the Commission that she gave Commissioners Suemori and Amano a timesheet form, which included a case number, and showed it to Investigator Shanafelt. She further explained that he might want to use their form but if he could list “c” for “complaint” or “r” for “request for advice” and also to separate the case number. Commissioner Amano suggested that the “word document” timesheet be put on “Excel” instead.

Commissioner Suemori asked for more clarification about complaints, as well as the processes and functions of the case log and the assignment of EC numbers. The ALC and Investigator Shanafelt provided explanations, in detail, to the Commissioners.

Commissioner Suemori also asked if the log was able to compute the “time” spent on each case, and the ALC confirmed that there’s no type of function to date, but timekeeping could be done. Commissioner Amano recommended that it be on Excel, and the ALC confirmed that she was already keeping her time on Excel. Commissioner Suemori and the ALC reconfirmed about Staff being able to count the old cases.

Chair Marks clarified that the log did not add aging and then asked Legal Clerk Bigornia to explain her manual search of the aging cases. Legal Clerk Bigornia explained that she chose to start on fiscal year 2012, since that year was complete, and that she tested only a “chunk” of that fiscal year, and it was not done on an Excel spreadsheet because there were too many formulas.

The ALC added that she went through the entire master index and then directed the Commissioners to look at Exhibit D and the outstanding cases that existed, and further explained in detail of her findings, as well as responded to questions by Chair Marks. Investigator Shanafelt also responded to questions by Chair Marks, regarding cases given to him by either the EDLC, the ALC or the previous Investigator.

Commissioner Suemori asked for clarification on the process to close a case, and Investigator Shanafelt provided an explanation in detail to the Commission, as well as informed them about his use of a tickler system.

Commissioner Suemori further asked if the entire office had a continual office tickler for everyone's cases or whether the cases were counted at the end of the year and that a daily log was necessary in order for the City Council to see a need for another investigator. Investigator Shanafelt responded with a detailed explanation to the Commission.

Commissioner Yuen made a request to Investigator Shanafelt if he should indicate on his timesheet the actual time spent in doing his timesheets, and Commissioner Amano also informed him that timesheets were necessary in order to justify for the budget or the need for other resources. Investigator Shanafelt explained to the Commission that he had been trying to find out the best way to record his time and concluded that by recording and/or taking notes was the most efficient way, and Commissioner Amano agreed. Commissioner Yuen further stated that the Commission should welcome input from Staff, in order to improve the process as they go along.

Chair Marks asked the ALC for clarification of "referred to another agency," referenced in the log, and whether it meant the case was closed. The ALC confirmed and further explained in detail about the "color coding" fonts on the log.

Commissioner Suemori asked why a case would be referred back to the agency, and the ALC explained, in detail, the normal practice of the office and the EDLC.

Commissioner Suemori further asked how Staff kept track of the number of cases per the color coding on the log, as well as the opening and closing of cases. The ALC responded in detail and also explained that closing cases was done only when they had time.

Commissioner Silva asked if there were "statute of limitations," and the ALC and the other Commissioners agreed that those cases would not toll the statute of limitations. The ALC then asked the Commissioners what they would want the Staff to do regarding those types of cases, and Commissioner Amano responded that they should wait until the timesheets were reviewed and thereafter make a determination and recommendation.

Chair Marks informed the Commissioners to view the log that Legal Clerk Bigornia had on her computer and further stated that it couldn't be printed-out, since there was an enormous amount of information. Chair Marks further stated that the log doesn't age or keep track of any other information, except for the day the case was opened and to whom it was assigned to, as well as whether it went to another agency or was recommended that it be closed, and that only a manual count would determine the age of a case.

Chair Marks informed the Commission that there were 68 open cases. Commissioner Suemori wanted clarification about whether there were any other cases that wasn't in the log and the ALC confirmed that every case was listed on the log. Investigator Shanafelt further stated how he handled or processed each case assigned to him since the first day on the job, and Commissioner Suemori confirmed her understanding.

The ALC directed the Commission to Exhibit "D", on the last page, and explained that there were different ways cases could be initiated and sometimes it could be

external or internal and further stated that there are “anonymous initiated unassigned” cases (10), “internal initiated unassigned” cases (8) and “third-party initiated unassigned” cases (11). The ALC further stated that in her opinion and depending upon the severity, “third-party identified initiated unassigned” cases should also be listed, since it is actually someone who contacted Staff from the outside and that Staff should respond to them with a status update. Chair Marks asked if the third-party cases could be identified, and the ALC confirmed and further stated that she could go back and research and inform the Commission. Chair Marks then responded that Investigator Shanafelt could assist the ALC.

Commissioner Amano stated that the Commission should be setting policy on whether certain cases could be worked on by the Ethics Commission, since Staff does not have the capacity to take on those cases and that they may need to look at other jurisdictions and then determine if Staff should be increased and whether to have a separate litigation section that could handle the prosecution of cases.

Chair Marks asked if there were any other questions, and Commissioner Silva commented that he had suggested that the litigation cases be turned over to the Prosecutor’s office. Investigator Shanafelt agreed and commented on a few matters he referred back to HPD.

Commissioner Suemori asked about RFA (Request for Advice) cases and prioritizing cases, and also whether there was an easier way to identify them. The ALC explained that the log had the capabilities to search for a “type of case.”

3. FY 2017 Budget Status.

Chair Marks informed the Commission that there was a “hold” on unspent money on each quarter that had passed, because the City overall was over budget and didn’t know if that quarterly “hold” would be lifted or not and that if it’s lifted, the budget would be “okay,” with about couple hundred dollars in the “black,” but if it’s not lifted, then it would be in the “red.” Chair Marks directed the Commission to the last page of Exhibit “E,” and stated that in order to save money, the subscription for Westlaw would be cancelled and Mindflash training for the City employees’ would be postponed until next fiscal year, and that the “hold” would end on June 30.

Chair Marks reported that she appeared before the Budget Committee and, in preparation for that meeting, she noticed that there was a vacant lawyer position, which was probably the EDLC’s effort to try and create an assistant executive director, so that the ALC would be promoted into that position so that the money would be used from the existing position (ALC’s) to fund it, but there wasn’t any intention to actually create a new vacant lawyer position, since no position description had been prepared.

Chair Marks also informed the Commission that she asked Dennis Kodama of DDC (Department of Design and Construction) to include another office space for more growth, and Commissioner Amano confirmed that it was a good idea. Chair Marks confirmed that the Budget Committee Chair was Ann Kobayashi and that she was very cordial. The ALC informed

the Commission that Chair Kobayashi questioned the square footage, and Chair Marks stated that all the Commissions with the City were to be moved to Kapalama Hale and that some rents would go either up or down and that there might be a savings when it's balanced out. Chair Marks further stated that Councilmember Trevor Ozawa questioned why the rent would be higher than the current rent, but was then informed that the plan may be for the City to purchase the building. The ALC further informed the Commission that Councilmember Kimberly Pine asked that the Corp Counsel, Donna Leong, provide an explanation or detailed report about the Kapalama Hale move. Chair Marks informed the Commission that Dennis Kodama of DDC provided her with a "draft" floor plan.

Commissioner Yuen commented that the move to Kapalama Hale would be good cause for a complaint by the public because of back payments and high rents that the City was paying, especially for a vacant building, and Commissioner Silva agreed.

Chair Marks informed the Commission that she unofficially heard that the move would take place by the beginning of the fiscal year, July 1.

Chair Marks directed the Commission to Exhibit "F", Budget and Fiscal Services' budget report and that the budget for the next fiscal year included four percent (4%) anticipated raises.

Commissioner Yuen asked the ALC about the vacant lawyer position, and the ALC responded in detail about the creation of the salaries for the EDLC and ALC and that there were problems with the Charter, and that was the reason for working on a proposed Charter amendment in order to put all attorneys under the Salary Commission. The ALC also explained, in detail, about the reasons for the proposed upgrade in her position from an SR-26 to an EM-3, as well as the reason for the new lawyer position that had no job description. The ALC concluded that if there's no money then there can be no position, and Commissioner Suemori responded that there needed to be an assistant lawyer position before an assistant executive director position.

4. Financial Disclosure Compliance Status.

Chair Marks informed the Commission that Legal Clerk Bigornia prepared a report, which was shown in Exhibit "A". The ALC commented that there was a decrease in delinquent filers, from the time the report was sent out. The outstanding Board and Commission members' financial disclosures were down from seven (7) to four (4). Legal Clerk Bigornia informed the Commission that Staff from the Managing Director's office was assisting in following-up with the outstanding filers, and that seven (7) notice of violations had been sent out. The ALC also reported that the employees outstanding was down from seven (7) to zero (0).

Commissioner Suemori requested that she would prefer that the Managing Director's office send out reminders to the Mayor's office and Commissions, and Legal Clerk Bigornia responded that they do assist Staff in sending out reminders by the January 31 deadline, and if there's no compliance by the late filers then the City Council Chair and the

Managing Director would send out another reminder, via our office. Commissioner Suemori responded that she would prefer that reminders be sent to the Board and Commissions by the Mayor, by the January 31 deadline, and that the employees' reminders be sent out by the Managing Director, and if there's no response by March 31, then notice of violation letters should go out.

5. Ethics Training Program Status.

The ALC thanked everyone who completed the "test" training Mindflash, and that there were a few issues that she needed to "tweak," i.e., volume, etc., but did receive positive feedback, however, due to insufficient funds she was unable to complete the program until next fiscal year beginning July 1. Chair Marks suggested that the ALC could still work on thoughts and anything else she may want to add or "tweak," based on feedback.

6. Charter Amendments Status (Permitted Interaction Group).

Chair Marks asked if there were any questions or status, and since there were none, moved on to Item 7.

7. Gift Guide Newsletter Status/Responses.

Chair Marks asked if any feedback was received from the Supervisors of the City, and the ALC responded that the EDLC did send out the Newsletter to all City Directors and their Secretaries, who were asked to distribute to Staff, and that she only received two (2) emails asking for clarification.

Chair Marks asked the ALC about her 1-sheet newsletter, and the ALC responded that it was only her suggestion to the EDLC, who asked for her thoughts on his flyer and when she responded and attached a copy of her newsletter with a colored format and that he did not respond, but rather sent out the flyer, which did include other suggestions that she had made.

The ALC asked the Commission if they had any ideas for the newsletter and if there was anything they wanted to focus on or highlight, and Chair Marks suggested to include those complaints or requests for advice, which stood out more than others to be addressed in training or in a newsletter. The ALC agreed that it could be done by using the stats.

The ALC also reported that by next year in the very beginning of January, when the third quarter newsletter goes out, a reminder of the due date for Financial Disclosures will be included. Commissioner Suemori suggested that the reminder should go out in the second quarter newsletter.

Commissioner Amano asked if there was a national ethics newsletter, and the ALC responded that there is a Federal U.S. office of government ethics. Commissioner Amano also asked if they reported egregious or bad cases from other jurisdictions and that it would be a "learning from a distance," and the ALC responded that she was not sure but would look into it, and was also in agreement. Chair Marks suggested that Staff look into a subscription to a

government newsletter.

- C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel

Chair Marks informed the Commission that Commissioner Lilly and the EDLC were working on the evaluation forms and asked if the Commission had any input. Commissioner Amano requested that the matter be deferred until Commissioner Lilly can attend a meeting, and Commissioner Suemori also requested that the matter be deferred until April.

Chair Marks asked if there were any other matters to be discussed and since there were none, asked for a motion to adjourn and to go into executive session. Commissioner Yuen so moved and Commissioner Silva seconded. All were in favor and the motion passed unanimously.

IV. EXECUTIVE SESSION SUMMARY

- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the January 20, February 11 and February 17, 2016 Meetings.

The approval of the minutes will be deferred to the next meeting.

- B. For Discussion: Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Provide the Status Regarding the Retention of an Independent Ethics Investigator Required Due to a Conflict of Interest.

Chair Marks reported that there was discussion about procurement for an independent ethics investigator and the status of the office.

V. ADJOURNMENT

Commissioner Yuen moved to adjourn the meeting. Commissioner Silva seconded. All were in favor, and the motion passed unanimously.

The meeting adjourned at approximately 12:47 p.m.